

NON-DISCLOSURE AGREEMENT

This **NON-DISCLOSURE AGREEMENT** is made by and between Advanced Optical Technologies, L.L.C. ("AOT") and Metalumen. (the "Company").

RECITALS

WHEREAS, AOT wishes to disclose to the Company information relating to a technology (the "Technology"), which is deemed proprietary and confidential by AOT, solely for the purpose of enabling the Company to evaluate the possibility of a transaction with AOT or for performing the Company's obligations under separate written agreements with AOT; and

WHEREAS, in connection with the Company's evaluation of a potential transaction with AOT, the Company may disclose to AOT information relating to the business and operations of the Company, which is deemed proprietary and confidential by the Company, solely for the purpose of assisting AOT to evaluate the potential transaction or for performing AOT's obligations under separate written agreements with the Company.

NOW, THEREFORE, the parties agree as follows:

1. **Definition and Treatment of Confidential Information**

(a) The term "Confidential Information" shall mean any information about the Technology AOT or AOT's agents or representatives furnish to the Company or the Company's employees, officers, directors, consultants or legal counsel or other agents or representatives (collectively, "representatives") and any other information, including but not limited to information relating to the business and operations of AOT, furnished to the Company or the Company's agents or representatives that is identified by AOT or AOT's agents or representatives as proprietary and confidential, whether oral, written or in any other form, including, without limitation, any electronic, photographic or computer format.

"Confidential Information" shall also include any information about Metalumen furnished to AOT or AOT's employees, officers, directors, consultants or legal counsel or other agents or representatives (collectively, "representatives") and any other information, including but not limited to information relating to the business and operations of Metalumen, furnished to AOT or AOT's agents or representatives that is identified by Metalumen or Metalumen's agents or representatives as proprietary and confidential, whether oral, written or in any other form, including, without limitation, any electronic, photographic or computer format.

All notes, analyses, compilations, studies or other documents of the receiving party which contain or reflect Confidential Information of the other party shall be Confidential Information and be subject to the protections provided by this Agreement.

(b) Confidential Information shall not include and the obligations contained herein shall not apply to information: (i) if it is generally known to the public at the time of disclosure or becomes publicly known through no wrongful act of the recipient party; (ii) is known to the recipient party at the time of disclosure or is independently developed by the recipient party; (iii) is used or disclosed with the prior written approval of the disclosing party; (iv) is furnished to a third party by the disclosing party without similar non-disclosure restrictions on the third party's rights; (v) is received by AOT or the Company from a third party who had a lawful right to disclose it to such party; or (vi) is disclosed pursuant to the requirement or request of a court or governmental agency. The party claiming that information falls within the above exclusions to Confidential Information shall have the burden of proving the same.

(c) The recipient of Confidential Information of the other party shall treat the Confidential Information as the proprietary and confidential information of the disclosing party, shall not disclose the Confidential Information to any other person or entity except as authorized herein, and shall use reasonable efforts to safeguard the Confidential Information, including using efforts at least to the same extent that it would its own proprietary and confidential information. The recipient shall immediately notify the disclosing party of any request by any third person (including any court or governmental agency) that the Confidential Information be disclosed and shall cooperate with the disclosing party in its efforts to protect the Confidential Information from disclosure.

(d) The recipient of the other party's Confidential Information shall not use such Confidential Information for any purpose except to evaluate a possible business transaction between AOT and the Company or to perform its obligations under separate written agreements between the parties.

(e) Each party agrees to reveal the Confidential Information received hereunder only to its representatives who need to know the Confidential Information for purposes permitted by Section 1(d) above and who are informed of the confidential nature of the Confidential Information. The party receiving the Confidential Information agrees to be and remain jointly and severally liable for any disclosure by any of its representatives which is not in accordance with this Agreement.

2. **Non-Disclosure.** Without the other party's prior written consent, except as required by law as confirmed by the opinion of legal counsel, neither party shall disclose to any person the fact that Confidential Information has been made available by the other party, that discussions or negotiations are taking place or have taken place concerning a possible transaction

or any of the terms, conditions or other facts with respect to any such possible transaction, including the status thereof.

3. **Return or Destruction of the Information.** All Confidential Information furnished by one party to the other party pursuant to this Agreement shall be and remain the property of the disclosing party. Each party agrees not to make more than three (3) copies of the other party's Confidential Information without the disclosing party's prior written consent. All tangible forms and copies of the Confidential Information, such as written documentation, furnished by either party to the other pursuant to this Agreement shall be promptly returned to said party or destroyed upon the furnishing party's written request.

4. **Nature of Agreement.** This Agreement shall not be construed as requiring either party to enter into any contractual or other relationship with the other or to assist in any way or to disclose to such other party any Confidential Information. It only sets forth the rights and obligations of the parties with respect to such Confidential Information that is, in fact, disclosed.

5. **Accuracy of Information.** Neither party nor any of its agents, representatives or employees makes any representation or warranty as to the accuracy, completeness or freedom from defect of the Confidential Information, including freedom from any patent infringement that may result from the use of such Confidential Information.

6. **Technology Rights.** No rights or obligations are to be implied by this Agreement with respect to any products, processes, patents, inventions, trademarks, trade secrets or copyrights. This Agreement shall not be construed to grant any license to either party directly or indirectly under any patent or patent application of the other party or any third party, or any right, title, interest or license in or to any inventions, technical data or other intellectual property of the other party or to which the other party has rights, or to grant any right to the recipient party to use any Confidential Information disclosed hereunder for any purpose other than those permitted by Section 1(d) above.

7. **Entire Agreement.** This Agreement contains the entire agreement between the parties and supersedes any previous understandings, commitments or agreements, oral or written, with respect to the subject matter hereof.

8. **Termination.** Either party may terminate this Agreement on written notice to the other, but termination shall not affect the rights and obligations hereunder with respect to the Confidential Information disclosed by either party prior to termination.

9. **No Waiver.** It is understood and agreed that no failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

10. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

11. **Term.** The confidentiality and use obligations imposed in this Agreement shall commence upon the execution hereof and continue and survive the termination of discussions between AOT and the Company, the expiration or termination of other agreements between the parties and any return of the Confidential Information.

12. **Remedies.** It is understood and agreed that money damages would not be a sufficient remedy for any breach of this Agreement by a party or its representatives and that the nonbreaching party shall be entitled to injunctive relief as a remedy for any such breach. Such remedy shall not be deemed to be the exclusive remedy for any such breach but shall be in addition to all other remedies available at law or equity to the nonbreaching party.

Dated this 19 day of March, 1999.

ADVANCED OPTICAL TECHNOLOGIES, L.L.C.

METALUMEN

By [Signature]
Name: Eric C. Law Jr.
Title: General Manager
Date: 19 Mar 99

By _____
Name: _____
Title: _____
Date: _____

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To: John Reim

9. **No Waiver.** It is understood that no failure or delay in exercising any right, power or privilege hereunder shall constitute a waiver thereof, nor shall any single or partial exercise thereof preclude any other exercise thereof or the exercise of any right, power or privilege hereunder.

10. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

11. **Term.** The confidentiality obligations imposed in this Agreement shall commence upon the execution hereof and shall continue and survive the termination of the discussions between AOTI and the Company, the expiration or termination of other agreements between the parties and any return of Confidential Information.


12. **Remedies.** It is understood and agreed that money damages would not be a sufficient remedy for any breach of this Agreement by a party or its representatives and that the nonbreaching party shall be entitled to injunctive relief as a remedy for any such breach. Such remedy shall not be deemed to be the exclusive remedy for any such breach but shall be in addition to all other remedies available at law or in equity.

Dated this _____ day of _____, 1999.

ADVANCED OPTICAL TECHNOLOGIES, L.L.C.

By _____
Name: _____
Title: _____
Date: _____

ETALUMEN


Name: RANDY SOLLIDAY
Title: NAT'L SALES MGR
Date: 11-19-99